

## Assembly Bill No. 1582

### CHAPTER 199

An act to amend Section 55601.5 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor July 27, 1999. Filed with  
Secretary of State July 28, 1999.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1582, Florez. Agriculture: grape crusher processors: grape concentrate: reporting.

The Clare Berryhill Grape Crush Report Act of 1976 requires every processor who crushes grapes in this state to furnish to the Secretary of Food and Agriculture reports on the total number of tons of grapes purchased by the processor in California during the preceding crush within each grape-pricing district and information concerning the final prices, as specified. A violation of these provisions is a crime.

This bill would revise those reporting requirements to also require the reporting of the total number of tons of grapes purchased and crushed that will be marketed as grape concentrate. The bill would prohibit any action, including civil and criminal penalties, to be taken against a person, as specified, based on the reporting of grape concentrate pursuant to these provisions. The bill also would restrict the release of information by the secretary in that regard, as specified. The bill would define "estimated equivalent tons" for purposes of the bill. The bill would also make nonsubstantive, technical changes in those provisions.

*The people of the State of California do enact as follows:*

SECTION 1. Section 55601.5 of the Food and Agricultural Code is amended to read:

55601.5. (a) (1) Notwithstanding Section 55461, on or before January 10 of every year, every processor who crushes grapes in this state shall furnish to the secretary, on forms provided by the secretary, a report that includes all of the following:

(A) The total number of tons of grapes purchased by the processor in this state during the preceding crush within each grape-pricing district, broken down by total tons purchased, variety, and price, including any bonuses or allowances, and sugar calculations.

(B) The total number of tons of grapes purchased by the processor in this state in nonrelated purchases during the preceding crush within each grape-pricing district, broken down by total tons

purchased, variety, and price, including any bonuses or allowances, and sugar calculations.

(C) The total number of tons of each variety of grape crushed within each grape-pricing district and the average sugar content of each variety within each grape-pricing district.

(D) The total number of tons of grapes purchased and crushed that are expected, as of the date of reporting by the processor, to be marketed as grape concentrate. In reporting tons purchased and crushed that are expected to be marketed as grape concentrate, processors may estimate equivalent tonnage. In estimating the equivalent tonnage, the processor shall include all equivalent tons crushed for the production of grape concentrate for wine and all other purposes marketed outside the state and the equivalent tons crushed for the production of grape concentrate for all purposes other than wine marketed within the state. In determining the estimated equivalent tons, processors shall make their best estimate of the gallons of concentrate per ton of grapes crushed based upon the Brix level of the grapes used in concentrate production.

(2) (A) When reporting price within the category of all tonnage purchased, processors shall include grapes purchased from (i) growers for wine, wine vinegar, juice, concentrate, and beverage brandy, (ii) another processor only if that processor was also the grower of the grapes, (iii) growers that are considered separate entities from the processor operation, or (iv) growers or other processors, but not by the reporting processor; and shall exclude (i) material other than grapes, and defects, or other weight adjustments deducted from the gross-weight ticket, (ii) any raisin-distilling material, (iii) grapes grown by the processor from vineyards that are not considered separate entities, (iv) grapes purchased from other processors that were previously purchased from growers, or (v) grapes crushed to grower accounts or crushed for other wineries. If several varieties were packaged together and purchased for one price, the processor shall report the average price per ton as one mixed lot, and when reporting crush information, shall report individual variety and tonnage information.

(B) When reporting price within the category of nonrelated purchases, processors shall exclude tonnage of grapes purchased from a grower if, during the reporting year (i) the grower or an affiliate of the grower, or both the grower and the affiliate of the grower, owned, directly or indirectly, at least 5 percent of the indicia of ownership or voting authority of the processor, (ii) the processor or an affiliate of the processor, or both the processor and the affiliate of the processor, owned, directly or indirectly, at least 5 percent of the indicia of ownership or voting authority of the grower, or (iii) the processor or an affiliate of the processor, or both the processor and the affiliate of the processor, provided long-term financing to the

grower in exchange for rights or options to purchase a significant portion of the grower's harvest.

(b) On or before February 25 of every year, each processor who crushes grapes in this state shall furnish to the secretary information concerning the final prices, including any bonuses or allowances, paid by variety and grape-pricing district to all growers holding reference price contracts in effect prior to January 1, 1977, which payments have not been reported on January 10.

(c) (1) The secretary may not release or otherwise make available any information furnished by an individual processor under this section, except in proceedings brought against the processor by the secretary for the purpose of enforcing this section, or except in the case of a producer who holds any reference price-grape purchase contract, to whom the secretary may furnish, upon request and at a reasonable cost, the information needed to verify the reference price, including any bonuses or allowances, set forth in the contract.

(2) The secretary shall not release or otherwise make available any information furnished by an individual processor under this section to any other division of the department except in accordance with a subpoena issued in accordance with Section 1985.3 of the Code of Civil Procedure.

(3) The secretary shall release only aggregate figures for grapes crushed that are expected to be marketed as grape concentrate and shall not include information by district, types, or variety.

(d) The secretary shall enforce the collection of the information and, on or before February 10 of each year, shall publish a preliminary summary report on the preceding crush. The report shall include all of the following information:

(1) The weighted average price paid on the basis of the prices, including any bonuses or allowances, reported and average sugar content for each grape variety purchased within each grape-pricing district.

(2) The total number of tons of grapes crushed and the average sugar content for each grape variety within each grape-pricing district.

(3) Each price category paid, separated by sugar calculations, if any, and the percentage each represents of the total for each variety within each grape-pricing district.

(4) Commencing with the report for the 1997 crush, in a separate and independent table without affecting or modifying existing tables, by weighted average price only, nonrelated purchases, by variety within each grape-pricing district excluding any bonuses, allowances, sugar calculations, and tonnage.

(e) On or before March 10 of each year, the secretary shall publish a final summary report, which shall contain all of the data furnished by the processors on or before January 10 and on or before February 25 of each year covering purchases under reference price contracts.

The secretary may publish an addendum or supplemental report when reasonably necessary to correct any erroneous or misleading information contained in the annual report required by this section.

(f) The forms provided to processors by the secretary pursuant to this section shall provide for the separate reporting of grapes used by a processor (1) as distilling material and (2) for both beverage brandy and other than beverage brandy. A processor shall report all grapes used as distilling material by variety. The secretary, in determining the weighted average price paid for each grape variety purchased within each grape-pricing district, shall not include the prices paid for grapes of any variety used as distilling material for other than beverage brandy in determining the weighted average price. The secretary's report shall include a separate summary regarding grapes used by processors as distilling material.

(g) All grape purchase contracts entered into on or after January 1, 1977, shall provide for a final price, including any bonuses or allowances, to be set on or before the January 10 following delivery of the grapes purchased. Any grape purchase contract entered into in violation of this subdivision is illegal and unenforceable. For the purpose of this section, a grape purchase contract shall not include any existing supply contract between a nonprofit cooperative association and a commercial processor.

(h) (1) If the department reasonably believes that a processor has failed, refused, or neglected to provide the information required by this section, or if the department finds apparent discrepancies in the information reported, the department may audit or investigate in accordance with Article 11 (commencing with Section 55721) or proceed in accordance with Article 5 (commencing with Section 55522.5), except as specified in paragraph (6). Injunctive relief under Section 55921 shall issue only upon a finding by a court of competent jurisdiction that a processor has done any of the following:

(A) Refused to submit required information after the department provides reasonable notice to the processor of the processor's obligations and rights under this chapter.

(B) Misreported a fact, knowing that fact to be false, or in reckless disregard for whether the fact was true.

(2) Both the refusal to submit after the provision of reasonable notice and the misreporting of a fact under the circumstances set forth in this subdivision shall constitute violations of this chapter. Neither a refusal to submit nor a misreporting of a fact under this subdivision shall be prosecuted pursuant to Article 18 (commencing with Section 55901) or subject to civil penalties under Article 19 (commencing with Section 55921).

(3) In the case of misreporting in any action authorized by this section, it shall be a defense for a processor to rely on information provided to the processor by a producer with respect to whether a purchase is a related purchase.

(4) In the case of a refusal to report or misreporting, the department shall not commence an audit or investigation, other than a routine audit based on scientifically proven random sampling methods, without first disclosing to the processor being audited or investigated any and all information that constitutes the department's belief that the processor has not complied, including the identities of all persons providing information on potential violations to the department.

(5) Anonymous complaints, unattributable information, or undocumented information shall not constitute reasonable belief and shall not be the basis for any investigation or audit action brought under this section. The department shall inform the processor of its reasons for auditing.

(6) No action shall be taken pursuant to Article 5 (commencing with Section 55522.5), Article 18 (commencing with Section 55901), or Article 19 (commencing with Section 55921) based on the reporting of grape concentrate pursuant to subparagraph (D) of paragraph (1) of subdivision (a).

(i) For purposes of this section, the following definitions shall apply:

(1) "Affiliate" or "affiliated with" means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control of another person. For the purposes of this paragraph, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of any person.

(2) "Estimated equivalent tons," when used in the context of reporting tons purchased and crushed that will be marketed as grape concentrate, shall be determined by use of the following formulas:

(A) Gallons of concentrate (approximately 20° Brix) produced divided by 40 equals equivalent tons.

(B) Gallons of concentrate (approximately 68° Brix) divided by 170 equals equivalent tons.

(3) "Grape-pricing district" means a district used by the federal-state cooperative market news services, as provided in Section 58231.

(4) "Long-term financing" means financing that by its terms is due over a period of more than one year, or more than 180 days if there is a purchase agreement between a grower and a processor, or if there is a farming agreement where the purchase price is on a per-acre basis.

(5) "Person" includes an individual, partnership, corporation, limited liability company, firm, company, or other entity.

(6) "Purchase" means the taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift, or any other voluntary transaction creating an interest in property. For purposes of this

paragraph, “sale” shall consist of the passing of title from the seller to the buyer for a price.

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